

Arnold & Porter

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August 25, 2021

VIA ECF

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
40 Centre Street, Room 2202
New York, New York 10007

Re: *Accent Delight International Ltd. et al. v. Sotheby's et al.*, 18-cv-9011

Dear Judge Furman:

We write respectfully on behalf of Defendants to update the Court on developments regarding Sotheby's Switzerland-based letter of request for discovery from Jean-Marc Peretti pursuant to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the "Hague Convention"), 28 U.S.C. § 1781, which Your Honor signed on January 3, 2020 (the "Letter of Request"), *see* ECF No. 138, and to request that the Court issue a supplemental order.

To summarize the most recent background, on March 3, 2021, Your Honor issued an Order of Clarification to the Swiss Court (i) conveying this Court's request that the Swiss Court proceed with enforcing the Letter of Request; (ii) requesting that the Swiss Court order Mr. Peretti to produce the documents sought in the Letter of Request, including, if necessary, by asking the Geneva Public Prosecutor's Office, pursuant to Mr. Peretti's right to do so under the LIPAD/GE, to provide him with copies of the documents and data formerly in his possession that were seized by that Office; (iii) requesting that, pursuant to Article 10 of the Hague Convention and Article 160 of the Swiss Civil Procedure Code, the Swiss Court ask the Geneva Public Prosecutor's Office to produce copies of the documents and data it seized from Mr. Peretti pursuant to an international criminal mutual assistance request from Monaco authorities in connection with criminal proceedings Plaintiffs initiated in Monaco (JI File n° CABI/15/04 - PG File n° 2015/000039); and (iv) requesting that the Swiss Court order Mr. Peretti to give testimony under oath at a hearing via videoconference, to be transcribed by a qualified stenographer who will also create a videographic record that will be usable by the parties to this litigation. *See* ECF No. 240 at 2. On July 27, 2021, Your Honor granted Sotheby's request for an extension until October 31, 2021 to take the deposition of Mr. Peretti. *See* ECF No. 327.

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On August 5, 2021, we received a letter from the Swiss Court enclosing the Geneva Public Prosecutor's response to Your Honor's request that the Public Prosecutor's Office produce copies of the documents it seized from Mr. Peretti. A copy of the Swiss Court's letter, including the Geneva Public Prosecutor's response, is attached here as Exhibit A in its original French; we have also attached a certified English translation of the letter and response as part of Exhibit A. The Geneva Public Prosecutor's letter states (i) that the documents sought in Sotheby's Letter of Request "do not appear in the proceedings file" that was "opened in execution of the request for assistance from the Monegasque authorities of February 27, 2015"; "[n]or does it appear from the proceedings that these documents were transmitted to the requesting authority," and (ii) that "[i]t is possible that these documents were in the items seized from the home of Jean-Marc PERETTI or at the head office of his company NELOMBOS SA, but these were returned to him in accordance with the inventories of items, copies of which you will find in the appendix." *See* Ex. A at ECF 3. The records included in the response indicate that items were returned in 2015. *See id.* at ECF 7, 17, 20.

The response from the Geneva Public Prosecutor, coupled with Mr. Peretti's representation to the Swiss Court that the requested documents are not in his possession, make clear that Sotheby's has no practical means of obtaining the documents listed in the Letter of Request through enforcement of the Letter of Request. Although in an ideal world Sotheby's would obtain the listed documents before taking Mr. Peretti's deposition, obtaining the documents is secondary to the primary goal of obtaining testimony from Mr. Peretti.

Accordingly, and in light of the Court's deadline of October 31, 2021 to complete Mr. Peretti's deposition, Sotheby's respectfully requests that Your Honor issue an order:

- (i) conveying the Court's request that, to the extent appropriate under Swiss law, the Swiss Court proceed with enforcing the portion of the Letter of Request requiring Mr. Peretti's testimony, notwithstanding the unavailability of the documents sought in the Letter of Request; and
- (ii) consistent with (i) above, requesting that, to the extent appropriate under Swiss law, the Swiss Court proceed with ordering Mr. Peretti to give testimony under oath at a hearing via videoconference, to be scheduled on a date prior to October 31, 2021, and to be transcribed by a qualified stenographer who will also create a videographic record that will be usable by the parties to this litigation.

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We thank the Court for its consideration of this request.

Respectfully submitted,

/s/ Sara L. Shudofsky
Sara L. Shudofsky

cc: All counsel of record (via ECF)

Any objection to this request shall be filed by August 27, 2021. Barring an objection, the request will be granted.

SO ORDERED.



A handwritten signature in black ink, appearing to read "Sara L. Shudofsky".

August 26, 2021